IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 335 OF 1994

Sainath Clearing Agency. ... Plaintiff.

V/s.

M/s. Kamath Packaging Ltd. & Anr. ... Defendants.

Mr. R.R. Arolkar for the Plaintiff.
None for the Defendants.

CORAM : DR. D.Y. CHANDRACHUD,J.

11TH JULY 2007.

P.C. :-

. The suit was instituted as a Summary Suit under Order 37 of the Code of Civil Procedure, 1908 for the recovery of an amount of Rs.66,326/- together with interest. The First Defendant has not been served with a Writ of Summons. The Suit is accordingly dismissed as against the First Defendant. Counsel appearing on behalf of the Plaintiff stated that the First Defendant is untraceable.

2. The Second Defendant against whom the suit is pressed is the State Trading Corporation of India

Limited. In the plaint it has been averred that the First Defendant had engaged the Plaintiff for exporting goods of the First Defendant to Abu Dhabi and Jeddah between March and October 1991. Bills were raised by the Plaintiff in the total amount of Rs.72,326/- of which the First Defendant paid an amount of Rs.6,000/-.

3. The claim against the Second Defendant is that the First Defendant had informed the Plaintiff by a letter dated 7th July 1992 that the Second Defendant was responsible for making payment of the bills. Unconditional leave to defend the Summary Suit was granted to the Second Defendant. However, no written statement has been filed by the Second Defendant.

4. The pleadings of the Plaintiff as they stand do not demonstrate any cause of action as against the Second Defendant. There is absolutely no privity or contract between the Plaintiff and the Second Defendant. Counsel appearing on behalf of the Plaintiff states that bills were raised upon the Second Defendant and an Advocate's notice was addressed by the Plaintiff to the Second Defendant. That does not establish the liability of the Second Defendant. There

is no contract or agreement under which the Second Defendant agreed to pay to the Plaintiff the sums due and payable by the First Defendant on account of the exportation of the goods of the First Defendant. The liability therefore cannot be fastened upon the Second Defendant. It is ex-facie clear both from the pleadings and from the affidavit in lieu of the examination in chief on behalf of the Plaintiff that there is no cause of action as against the Second Defendant.

5. The suit shall in the circumstances stand dismissed.